

## **CITY OF ALAMEDA**

### **Memorandum**

To: Honorable Mayor and  
Members of the City Council

Honorable Chair and  
Members of the Community Improvement Commission

Honorable Chair and  
Members of the Housing Authority Board of Commissioners

From: John A. Russo  
City Manager/Executive Director/Chief Executive Officer

Date: July 5, 2011

Re: Approve an Amendment to a \$150,000, Ten-Year Agreement with Resources for Community Development, the Community Improvement Commission (CIC) and the Housing Authority to Implement the Housing Authority's Obligations Pursuant to the Declaration of Reciprocal Easements, Covenants and Restrictions for the Breakers at Bayport Townhomes Modifying the Consultant Compensation Schedule

Assign the CIC's Obligation to Pay Pursuant to the Agreement to the City of Alameda and City Council Accept the Obligation to Pay

### **BACKGROUND**

In 2002, the Housing Authority selected Resources for Community Development (RCD), a non-profit housing developer, as its partner to build and operate the 52-unit Breakers at Bayport Apartments and to construct and sell the ten-unit Breakers at Bayport Townhomes. Both projects were completed in 2006, and the Breakers at Bayport Townhomes were sold to moderate-income families in 2007. As part of the development of the Breakers at Bayport Townhomes and Apartments, a Declaration of Reciprocal Easements, Covenants and Restrictions (Declaration) was prepared in 2004. The Declaration was necessary because the townhomes and apartment project have shared uses and maintenance of certain elements that required the establishment of easements, assessments, covenants, and restrictions to provide for the joint use, management, governance and operation of the projects. Under the Declaration, the Housing Authority is the Declarant and is the fee owner of the Rental Parcel.

When RCD entered into the amended 75-year ground lease for the Breakers at Bayport Apartments in 2004, it assumed certain operational responsibilities from the Declarant for the Rental Parcel. The Housing Authority, as the Declarant, continued to have

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Members of the Community Improvement Commission  
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obligations under the Declaration for the Townhomes. In June 2009, the Housing Authority Board of Commissioners (BOC) and the Community Improvement Commission (CIC) approved a \$150,000 agreement with RCD to carry out the Housing Authority's obligations over the next ten years. The attached Amendment to Agreement (Exhibit 1) would modify the consultant compensation schedule to pay the balance of the fees owed to RCD in Fiscal Year 2011-12 (FY11-12). Exhibit 2 is an assignment of the CIC's obligation to pay pursuant to the Agreement to the City of Alameda. The assignment is necessary due to a transfer of the Affordable Housing In-Lieu Fund from the CIC to the City budget in 2010.

### DISCUSSION

Acting on the Housing Authority's behalf, RCD carries out the Housing Authority's obligations under the Declaration. RCD provides staff support for the Joint Maintenance Committee, which is responsible for establishing, levying, and collecting any regular or special assessments; conducting any required hearings regarding violations of the Declaration; and maintaining all books and records pertaining to the Declaration. The Declaration has a number of use restrictions and maintenance requirements that RCD enforces on behalf of the Housing Authority. Use restrictions that are enforced include uniformity of appearance, approval of any subsequent construction, and rules regarding number of pets, maintenance of party fences, outdoor storage, placement of refuse containers, etc.

The agreement has a ten-year term and a \$150,000 budget. RCD has received \$38,899 to date. It is proposed to amend the agreement to modify the compensation schedule to pay RCD the balance due under the agreement, \$111,101, in FY11-12. These funds are included in the FY11-12 budget. Staff is proposing to amend the compensation schedule due to uncertainty at the State level regarding redevelopment and the availability of affordable housing funds over time, whether or not the existing agreement would be deemed a valid obligation of the CIC in the future, and to streamline the administrative work involved in implementing the agreement given reductions in staff over the last two years. At the end of term, the Housing Authority will evaluate whether it wants to extend the agreement with RCD, retain another consultant to administer its obligations, or directly administer its duties.

In 2009, when the agreement was approved, Affordable Housing In-lieu funds were deposited into a dedicated account in the CIC's budget. In 2010, the In-lieu fund was transferred to the City's budget. Therefore, it is necessary to assign the CIC's obligation to pay under the Agreement to the City as the funds to compensate the consultant are provided for in the City's budget.

Honorable Mayor and Members of the City Council  
Honorable Chair and  
Members of the Community Improvement Commission  
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### FINANCIAL IMPACT

The funds for this amendment to agreement are budgeted in the Housing Department's Affordable Housing In-lieu Fund 228. Monies in this fund are restricted to the construction, maintenance and preservation of affordable housing.

### RECOMMENDATION

Approve an amendment to a \$150,000, ten-year Agreement with Resources for Community Development to implement the Housing Authority's obligations pursuant to the Declaration of Reciprocal Easements, Covenants and Restrictions for the Breakers at Bayport Townhomes modifying the Consultant Compensation Schedule.

Assign the CIC's obligation to pay pursuant to the Agreement to the City of Alameda and City Council accept the obligation to pay.

Respectfully submitted,



Michael T. Pucci  
Executive Director

By:



Debbie Potter  
Housing Development and Programs Manager

Approved as to funds and account,



Fred Marsh  
Controller

Exhibits:

1. Amendment to Agreement
2. Assignment of Obligation to Pay

## AMENDMENT TO AGREEMENT

This Amendment of the Agreement (The Breakers at Bayport Apartments and Townhomes) ("Agreement"), entered into this 17<sup>th</sup> day of June 2011, by and between the COMMUNITY IMPROVEMENT COMMISSION OF THE CITY OF ALAMEDA, a public body ("CIC"), the HOUSING AUTHORITY OF THE CITY OF ALAMEDA, a public body, corporate and politic ("HOUSING AUTHORITY"), and **RESOURCES FOR COMMUNITY DEVELOPMENT**, a California nonprofit public benefit corporation, whose address is 2730 Telegraph Avenue, Berkeley, CA 94705, (hereinafter referred to as ("Consultant")), is made with reference to the following:

### RECITALS:

A. On June 17, 2009, an agreement was entered into by and between CIC, Housing Authority and Consultant.

B. CIC, Housing Authority and Consultant desire to modify the Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, it is mutually agreed by and between and undersigned parties as follows:

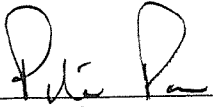
1. Paragraph 3 ("Compensation to Consultant") of the Agreement is modified to read as follows:

"Consultant shall be compensated for services performed pursuant to this Agreement in an amount not to exceed \$150,000 as set forth in Exhibit B-1, which is attached hereto and incorporated herein by this reference."

2. Except as expressly modified herein, all other terms and covenants set forth in the Agreement shall remain the same and shall be in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this modification of Agreement to be executed on the day and year first above written.

RESOURCES FOR COMMUNITY  
DEVELOPMENT

  
By: PETER POON  
Title: CHIEF FINANCIAL OFFICER

COMMUNITY IMPROVEMENT  
COMMISSION

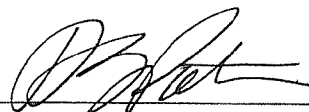
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John A. Russo  
Executive Director

CC/CIC/HABOC  
Exhibit 1 to  
Agenda Item #3-B  
07-05-11

RECOMMENDED FOR APPROVAL:

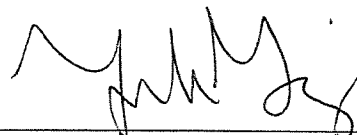


Michael T. Pucci  
Housing Authority Executive Director



Debbie Potter  
Housing Development & Programs Manager

APPROVED AS TO FORM:



~~Donna Mooney~~ Farimah Faiz  
~~Acting~~ General Counsel

Asst.

Consultant Compensation

All terms not defined herein shall have the meaning ascribed to them in the Consultant Agreement (The Breakers at Bayport) to which this Exhibit B-1 is attached to and a part thereof.

Term: 10 years

Total fee of \$150,000 for the Term of the Agreement.

The fee shall be paid to Consultant as follows:

On the Effective Date of this Agreement:	\$25,000
1 <sup>st</sup> Anniversary of the Commencement Date:	\$13,899
2 <sup>nd</sup> Anniversary of the Commencement Date:	\$111,101

**ASSIGNMENT OF CONSULTANT AGREEMENT**  
**The Breakers at Bayport Apartments and Townhomes**

THIS ASSIGNMENT of the Consultant Agreement for The Breakers at Bayport Apartments and Townhomes (the "Assignment") is made and entered into this 6<sup>th</sup> day of July, 2011, by and between the Community Improvement Commission of the City of Alameda, a public body corporate and politic ("Assignor"), City of Alameda, a charter city and municipal corporation ("Assignee"), the Housing Authority of the City of Alameda, a public body corporate and politic ("Housing Authority"), and Resources for Community Development, a California nonprofit public benefit corporation, whose address is, 2220 Oxford Street, Berkeley, CA 94704 ("RCD").

**RECITALS**

WHEREAS, on June 17, 2009, an agreement was entered into by and between CIC, Housing Authority, and RCD and on July 5, 2011, an amendment to Agreement was agreed to ("Agreement"); and

WHEREAS, Assignee desires to have the Agreement assigned to it; and

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration as found in the terms and conditions set forth herein, the parties hereto intending to be legally bound thereby, covenant and agree as follows:

1. Effective Date. The Effective Date of this Assignment shall be July 6, 2011.
2. Assignor hereby assigns to Assignee all of Assignor's rights and interest in and to and delegates to Assignee its obligation to pay under the Agreement.
3. Assignee accepts the assignment to it by Assignor of all of Assignor's rights, title and interest in and to, and the delegation to it by Assignor of Assignor's duty to pay under the Agreement.

IN WITNESS WHEREOF, the parties have executed this Assignment on the day and year first above written.

RCD

By: 

Title: Executive Director

Community Improvement Commission ("Assignor")

By: \_\_\_\_\_

Title: \_\_\_\_\_

Recommended for approval:

By: Gideon Roffy for

Executive Director  
Housing Authority of the City of Alameda

Approved as to form:

By: [Signature]  
Assistant General Counsel

City of Alameda ("Assignee")

By: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form:

By: [Signature]  
Assistant City Attorney